

**Entered on Docket**

June 30, 2014

**EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**



**IT IS SO ORDERED.**  
Signed June 30, 2014

**Arthur S. Weissbrodt  
U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ] Case No. 12-57109-ASW  
11 ]  
KENNETH BLACKWELL, ] Chapter 13  
12 ]  
Debtor, ]  
13 \_\_\_\_\_]  
14 In re ] Case No. 12-57115-ASW  
15 ]  
KATHLEEN BLACKWELL, ] Chapter 13  
16 ]  
Debtor. ] Hearing Date: Mar. 18, 2014  
Hearing Time: 2:15 p.m.

**MEMORANDUM DECISION RE: ELIGIBILITY**

19 This matter is before the Court on this Court's Orders  
20 Directing Briefing on Chapter 13 Eligibility ("Briefing Orders").  
21 Debtors Kenneth and Kathleen Blackwell ("Debtors") are represented  
22 by attorney Cathleen Cooper Moran in their respective chapter 13  
23 cases. The chapter 13 trustee, Devin Derham-Burk, is represented  
24 by attorney Nanette Dumas.

25 In the Briefing Orders, this Court raised the question of  
26 whether Debtors are eligible to be debtors under chapter 13 due to  
27 their debts exceeding the eligibility limits of 11 U.S.C. § 109(e),  
28 and gave the parties an opportunity to brief the issue.

The Court has considered the briefs filed by the parties, other relevant documents filed in this case, and the arguments of the parties. For the reasons set forth below, the Court finds that Debtors are not eligible for chapter 13 relief.

## I. FACTS

7       Debtors filed a joint chapter 13 petition on February 28, 2011  
8 (11-51826-SLJ). In that case, Debtors listed secured debts of  
9 \$2,442,933. The case was converted to chapter 7 on May 31, 2011 on  
10 the chapter 13 trustee's motion, which was brought on eligibility  
11 grounds. Debtors received a chapter 7 discharge on September 13,  
12 2011, and the case was closed. A few days later, October 7, 2011,  
13 Debtors filed a second joint chapter 13 case (11-59395-SLJ),  
14 listing their residence at 505 Gordon Avenue, San Jose, California  
15 (the "Property") as a community asset worth \$1.8 million. Schedule  
16 D filed in that case listed two secured obligations encumbering the  
17 Property, one to Chase Home Mortgage ("Chase") for \$2.4 million,  
18 and the other to "Tech Credit Union" for \$416,000. After the  
19 chapter 13 trustee filed an objection to confirmation raising the  
20 eligibility issue, Debtors moved to bifurcate the case. That  
21 motion was denied, and the case was dismissed on eligibility  
22 grounds on August 13, 2012.

23       A few weeks later, on September 28, 2012, Debtors filed the  
24 instant chapter 13 cases. Debtors' respective schedules and  
25 exemptions are identical in both cases. The Property is listed on  
26 each Schedule A as owned in joint tenancy with a total value of

1    \$1,500,000,<sup>1</sup> of which \$750,000 is listed as the current value of  
2 each Debtor's interest. Each Schedule D lists the debt to Chase  
3 with a total balance of \$1,984,000, but lists as the amount of  
4 Chase's claim only half the debt (\$992,000). Each Schedule D also  
5 lists a junior lien against the Property held by Technology Credit  
6 Union, with a full loan amount of \$416,000, "claim amount" of  
7 \$208,000, and a secured value of \$0.

8

9

## II. ISSUE

10    Whether Debtors' debts exceed the statutory debt limits for  
11 chapter 13 eligibility.

12

13

## III. ANALYSIS

14

### A. Determining Eligibility

15    Under the version of § 109(e) in effect on the petition date  
16 of September 28, 2012, "[o]nly an individual with regular income  
17 that owes, on the date of the filing of the petition,  
18 noncontingent, liquidated, unsecured debts of less than \$360,475  
19 and noncontingent, liquidated, secured debts of less than  
20 \$1,081,400 . . . may be a debtor under chapter 13 of this title."<sup>2</sup>  
21 Eligibility debt limits are strictly construed. In re Soderlund,  
22 236 B.R. 271, 274 (9<sup>th</sup> Cir. BAP 1999).

23

24    Ordinarily, chapter 13 eligibility is determined by reference  
25 to a debtor's originally filed schedules, checking only to see if

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26                   <sup>1</sup>The chapter 13 trustee questions Debtors' valuation of the  
27 Property. However, for purposes of this decision only, the Court  
will use Debtors' valuation.

28

29                   <sup>2</sup>These debt limits were increased to \$383,175 (unsecured) and  
\$1,149,525 (secured) on April 1, 2013.

1 the schedules were made in good faith. In re Scovis, 249 F.3d 975,  
2 982 (9<sup>th</sup> Cir. 2001).

3 Applying these principles to the instant case, Debtors have  
4 each listed a one-half interest in the Property as an asset on  
5 their respective schedules. The schedules indicate that Debtors  
6 own the property as joint tenants.<sup>3</sup> As such, Debtors may each list  
7 an undivided one-half interest in the joint tenancy in their  
8 bankruptcy schedules. See In re Summers, 332 F.3d 1240, 1243 (9<sup>th</sup>  
9 Cir. 2003) (under California law, community property presumption is  
10 rebutted when married couple acquires property from a third party  
11 as joint tenants); see also In re Reed, 89 B.R. 100, 105 (Bankr.  
12 C.D. Cal. 1988), aff'd, 940 F.2d 1317 (9<sup>th</sup> Cir. 1991) (only 50% of a  
13 debtor's joint tenancy interest is property of the estate).

14 Each Debtor also listed on Schedule D the obligation to Chase,  
15 showing in the Description column "Full loan amount of \$1,984,000  
16 and full arrears of \$335,374." However, in the column labeled  
17 "Amount of Claim Without Deducting Value of Collateral" the claim  
18 amount is listed as \$992,000, or one-half of \$1,984,000. The  
19 promissory note for this debt, which is attached to Debtors'  
20 complaints filed in the adversary proceedings, states in paragraph  
21 9 that each of the note's signers (i.e., each of the two Debtors)  
22 promises to pay the full amount owed on the note. Thus, each  
23 Debtor is fully liable on the note. See In re Cronkleton, 18 B.R.  
24 792, 793 (Bankr. S.D. Ohio 1982) (co-makers of a note cannot split

25  
26 \_\_\_\_\_  
27 <sup>3</sup>The Court notes that in case no. 11-59395, Debtors listed the  
28 Property as community property (despite having listed the Property  
as owned in joint tenancy in their first case). Debtors have not  
provided any explanation for this discrepancy, but, as it is not  
material to the result here, the Court need not address it.

1 the obligation to qualify under the debt limitation ceiling of § 109(e)

2 However, this does not end the inquiry. Debtors argue that,  
3 because their personal liability under the note was discharged in  
4 their prior chapter 7 proceeding, the secured debt to Chase must be  
5 measured by the value of the collateral, which in each case would  
6 be \$750,000. Debtors also argue that the chapter 7 discharge means  
7 that there is no unsecured portion on the obligations to either  
8 lienholder to be counted against the unsecured debt limitation.

9

10 **B. Effect of Prior Chapter 7 Discharge**

11 In Johnson v. Home State Bank, 501 U.S. 78 (1991), the Supreme  
12 Court held that even after a debtor's personal liability has been  
13 discharged in a chapter 7 proceeding, a mortgage lien remains a  
14 "claim"<sup>4</sup> in a chapter 13 case that may be provided for in the plan.  
15 "[A] mortgage interest that survives the discharge of a debtor's  
16 personal liability is a 'claim' within the terms of § 101(5)." Johnson,  
17 501 U.S. at 84. The Supreme Court reasoned that even  
18 after a debtor's personal liability has been extinguished, the  
19 lender retains the "right to payment" in the form of its right to  
20 the proceeds from the sale of the collateral. Alternatively, the

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21       <sup>4</sup>The term "claim" is defined in the Bankruptcy Code as:

22           (A) right to payment, whether or not such right is  
23 reduced to judgment, liquidated, unliquidated, fixed,  
24 contingent, matured, unmatured, disputed, undisputed,  
25 legal, equitable, secured, or unsecured; or

26           (B) right to an equitable remedy for breach of  
27 performance if such breach gives rise to a right to  
28 payment, whether or not such right to an equitable remedy  
is reduced to judgment, fixed, contingent, matured,  
unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

1 lender's surviving right to foreclose can be viewed as a "right to  
2 an equitable remedy" within the definition of "claim." Id. The  
3 Supreme Court analogized the mortgage interest that passes through  
4 a chapter 7 liquidation to a nonrecourse loan. Id. at 86.

5 In its opinion, the Supreme Court noted that the term "debt" -  
6 which is defined as "liability on a claim" under § 101(12) - has a  
7 meaning coextensive with that of "claim" as defined in § 101(5).  
8 Id. at 84 n.5 (citing Pennsylvania Dep't of Public Welfare v.  
9 Davenport, 495 U.S. 552, 558 (1990)).

10 Johnson is not an eligibility case and for that reason is  
11 arguably distinguishable from the case at bench. However, the  
12 language is very broad in terms of how a court determines whether a  
13 creditor has a claim (and thus debtor has a debt) after personal  
14 liability has been discharged in a chapter 7 case. In Johnson, the  
15 debtor defaulted on notes secured by a mortgage on farm property.  
16 When the creditor bank initiated foreclosure, the debtor filed for  
17 chapter 7 relief and received a discharge. The bank obtained  
18 relief from stay in the chapter 7, reinitiated the foreclosure, and  
19 obtained from the state court an in rem judgment of \$200,000.  
20 Before the foreclosure sale could occur, the debtor filed a chapter  
21 13 petition and listed the debt to the bank in his chapter 13 plan.  
22 The bank objected to confirmation, arguing that debtor could not  
23 include that debt in the plan because debtor's personal liability  
24 had been extinguished in the chapter 7. The bankruptcy court  
25 overruled the objection. The district court reversed, but on  
26 different grounds; the Court of Appeals for the Tenth Circuit  
27 affirmed. The Supreme Court took the appeal to resolve a conflict  
28 among circuits and reversed, holding that a mortgage lien remains a

1 claim against the debtor that may be "rescheduled" in a chapter 13  
2 case, notwithstanding discharge of the debtor's personal liability  
3 in a previous chapter 7 case.

4 The issue before the Supreme Court was whether a mortgage lien  
5 that secures an obligation for which a debtor's personal liability  
6 has been discharged in a chapter 7 liquidation is a "claim" subject  
7 to inclusion in a chapter 13 reorganization plan. The Supreme  
8 Court resolved the issue by examining the nature of a mortgage  
9 interest that survives a chapter 7 bankruptcy:

10 A mortgage is an interest in real property that  
11 secures a creditor's right to repayment. But unless the  
12 debtor and creditor have provided otherwise, the creditor  
ordinarily is not limited to foreclosure on the mortgaged  
13 property should the debtor default on his obligation;  
rather, the creditor may in addition sue to establish the  
debtor's in personam liability for any deficiency on the  
14 debt and may enforce any judgment against the debtor's  
assets generally. See 3 R. Powell, The Law of Real  
Property ¶ 467 (1990). A defaulting debtor can protect  
15 himself from personal liability by obtaining a discharge  
in a Chapter 7 liquidation. See 11 U.S.C. § 727.  
However, such a discharge extinguishes only "the personal  
liability of the debtor." 11 U.S.C. § 524(a)(1).  
16 Codifying the rule of Long v. Bullard, 117 U.S. 617, 6  
S.Ct. 917, 29 L. Ed. 1004 (1886), the Code provides that  
17 a creditor's right to foreclose on the mortgage survives  
or passes through the bankruptcy. See 11 U.S.C.  
18 § 522(c)(2); Owen v. Owen, 500 U.S. 305, 308-309, 111 S.  
Ct. 1833, 1835-1836, 114 L.Ed.2d 350 (1991); Farrey v.  
19 Sanderfoot, 500 U.S. 291, 297, 111 S. Ct. 1825, 1829, 114  
L. Ed.2d 337 (1991); H.R.Rep. No. 95-595, supra, at 361.  
20

21 Whether this surviving mortgage interest is a  
22 "claim" subject to inclusion in a Chapter 13  
reorganization plan is a straightforward issue of  
23 statutory construction to be resolved by reference to  
statutory construction to be resolved by reference to  
"the text, history, and purpose" of the Bankruptcy Code.  
24 Farrey v. Sanderfoot, supra, at 298, 111 S. Ct., at 1830.

25 501 U.S. at 82-83.

26 The Supreme Court then quoted the definition of "claim" under  
27 the Bankruptcy Code:

28 (A) right to payment, whether or not such right is  
reduced to judgment, liquidated, unliquidated, fixed,

1 contingent, matured, unmatured, disputed, undisputed,  
2 legal, equitable, secured, or unsecured; or

3 (B) right to an equitable remedy for breach of  
4 performance if such breach gives rise to a right to  
payment, whether or not such right to an equitable remedy  
5 is reduced to judgment, fixed, contingent, matured,  
unmatured, disputed, undisputed, secured, or unsecured.

6 § 101(5). The Supreme Court concluded that Congress intended to  
7 adopt the broadest possible definition of "claim" and that under  
8 this definition, a mortgage interest that survives the discharge of  
9 a debtor's personal liability is a "claim" within the definition of  
§ 101(5):

10 Even after the debtor's personal obligations have been  
11 extinguished, the mortgage holder still retains a "right  
12 to payment" in the form of its right to the proceeds from  
the sale of the debtor's property. Alternatively, the  
13 creditor's surviving right to foreclose on the mortgage  
can be viewed as a "right to an equitable remedy" for the  
14 debtor's default on the underlying obligation. Either  
way, there can be no doubt that the surviving mortgage  
15 interest corresponds to an "enforceable obligation" of  
the debtor.

16 Johnson, 501 U.S. at 84.

17 The Supreme Court observed that the discharge extinguishes  
18 only one mode of enforcing a claim - namely, an action against the  
19 debtor in personam, while leaving intact an action against the  
20 debtor in rem. Id. at 85. The Supreme Court then went on to  
21 observe that the conclusion that a surviving mortgage interest is a  
22 claim is consistent with other provisions of the Code. For  
23 example, § 502(b)(1) states that the bankruptcy court shall  
24 determine the amount of a claim and shall allow such claim in such  
25 amount except to the extent that such claim is unenforceable  
26 against the debtor and property of the debtor.

27 In other words, the court must allow the claim if it is  
28 enforceable against either the debtor or his property.  
Thus, § 502(b)(1) contemplates circumstances in which a  
'claim,' like the mortgage lien that passes through a

1 Chapter 7 proceeding, may consist of nothing more than an  
2 obligation enforceable against the debtor's property."

3 501 U.S. at 85 (emphasis in original). The Supreme Court also  
4 noted that § 102(2) defines 'claim against the debtor' as including  
5 a claim against property of the debtor. Finally, the Supreme Court  
6 concluded that the legislative history of the Code confirms this  
7 construction of the term "claim." Id. at 85-86.

8 Accordingly, the Supreme Court's opinion appears to foreclose  
9 any argument that because the claim cannot be enforced against the  
10 debtor personally, it does not count toward the eligibility  
11 requirements. Under Johnson, if, as of the petition date, the  
12 claim is enforceable against either debtor or property of the  
13 debtor, it should be included in the eligibility calculation. At  
14 some point later in the case, there may be valuation hearings that  
15 will result in the bifurcation of the claim - but as of the  
16 petition date (and for eligibility purposes), the entire claim has  
17 to be scheduled. This also is the holding of In re Quintana, 107  
18 B.R. 234 (9<sup>th</sup> Cir. BAP 1989), aff'd, 915 F.2d 513 (9<sup>th</sup> Cir. 1990), In  
19 re Scotto-DiClemente, 463 B.R. 308 (Bankr. D.N.J. 2012), and other  
20 cases cited infra in this Memorandum Decision.

21 The Ninth Circuit Bankruptcy Appellate Panel held in a chapter  
22 12 case that, although § 109(e) refers to "debts" rather than  
23 "claims," this is a distinction without a difference. See  
24 Quintana, 107 B.R. at 237 ("To the extent that a creditor has a  
25 claim against the debtor, the debtor owes a debt to the  
26 creditor."); Scotto-DiClemente, 463 B.R. at 314 (rejecting debtor's  
27 argument that court erred by focusing on "claims" because § 109(e)  
28 refers to "debts"); In re Branam, 476 B.R. 333, 338-39 (Bankr. S.D.  
Fla. 2012) (same).

1       In Quintana, the Ninth Circuit Bankruptcy Appellate Panel held  
2 that, despite waiver of a deficiency judgment, a lender's entire  
3 claim had to be counted for purposes of chapter 12 eligibility.  
4 107 B.R. at 239. The Panel reasoned that under § 102(2), "claim  
5 against the debtor" includes a claim against property of the  
6 debtor. According to the statute's legislative history, § 102(2)  
7 is intended to cover nonrecourse loan agreements where the  
8 creditor's only rights are against property of the debtor, and not  
9 against the debtor personally. Id., citing H.R. Rep. No. 95-595,  
10 at 315; S. Rep. No. 95-989, at 28 (1978), reprinted in 1978  
11 U.S.C.C.A.N. 5814, 6272. As a result, the obligation was a debt of  
12 the debtors defined by the amount of the claim against the  
13 collateral.

14 [The secured creditor's] claim against the property is  
15 approximately \$1.528 million [the full amount of the  
16 obligation] because it has the right to payment of that  
17 amount from the property or from the proceeds of the sale  
18 of the property. Although, as a practical matter,  
[secured creditor] will only be able to collect the value  
of the property, it has the right to payment of the  
entire obligation if under some circumstance, the  
property is sold for more than its present value.

19 Quintana, 107 B.R. at 239. The debt at issue here is analogous to  
20 a nonrecourse debt, see Johnson, 501 U.S. at 86. As such, under  
21 the cited cases, the entire amount of the debt must be counted for  
22 eligibility purposes.<sup>5</sup>

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23

24       <sup>5</sup>If the Property were not Debtors' principal residence, there  
25 would be policy arguments supporting Debtors' position that the  
26 unsecured portions of their debts to Chase and Technology Credit  
Union should not count for eligibility purposes. Debtors would not  
27 have to deal with the unsecured portion of those debts, i.e.,  
Debtors would not have to pay those debts in these chapter 13  
28 cases. These chapter 13 cases would not fail because Debtors could  
not pay those debts. These chapter 13 cases would not be made more  
difficult or complicated or vulnerable because of the unsecured  
debts to Chase and Technology Credit Union. However, those policy

1       Even if Johnson were distinguishable and not dispositive here,  
2 Debtors could still not prevail because of § 1322(b)(2). Chase's  
3 lien is in first priority on Debtors' principal residence. As  
4 such, § 1322(b)(2) comes into play and eliminates the possibility  
5 of modifying the lien in any respect for the following reasons.  
6

7 **C. Impact of § 1322(b)(2)**

8       In most instances, the unsecured portion of undersecured debt,  
9 as determined by a § 506(a) analysis, is counted as unsecured for  
10 § 109(e) eligibility purposes. Scovis, 249 F.3d at 983. However,  
11 § 1322(b)(2) prohibits a chapter 13 debtor from reducing an  
12 undersecured homestead mortgage to the fair market value of the  
13 mortgaged residence. See Nobelman v. Am. Sav. Bank, 508 U.S. 324  
14 (1993). This rule has been applied by several California  
15 bankruptcy courts in determining chapter 13 eligibility. See In re  
16 Smith, 419 B.R. 826 (Bankr. C.D. Cal. 2009), aff'd in part, 435 B.R.  
17 637 (9th Cir. BAP 2010))<sup>6</sup>; In re Tolentino, 2010 WL 1462772 (Bankr.  
18 N.D. Cal. Apr. 12, 2010); In re Silva, 2011 WL 5593040 (Bankr. N.D.  
19 Cal. Nov. 16, 2011). In those cases, the issue was whether the  
20 undersecured portion of an obligation secured by the debtors'  
21 principal residence should be counted as unsecured debt for  
22 purposes of chapter 13 eligibility. Those courts ruled that,  
23 pursuant to Nobelman, the undersecured liens could not be  
24

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25 arguments could not overcome Johnson and the other cases cited in  
26 this Memorandum Decision.

27       <sup>6</sup>In Smith, the BAP opinion affirmed the portion of the  
28 bankruptcy court's ruling that a wholly unsecured junior lien on  
debtors' primary residence had to be treated as unsecured for  
eligibility purposes.

1 bifurcated, and therefore any "undersecured" debt would nonetheless  
2 be treated as secured debt. See Smith, 419 B.R. at 832.<sup>7</sup>

3 Several courts have similarly construed Nobelman in the  
4 context of plan confirmation. See, e.g., Parker v. Federal Home  
5 Loan Mortgage Corp., 179 B.R. 492, 495 (E.D. La. 1995) (rejecting  
6 argument that prior chapter 7 discharge of chapter 13 debtor's  
7 personal liability on loan secured by principal residence permitted  
8 debtor to bifurcate claim); In re Dydo, 163 B.R. 663 (Bankr. D.  
9 Conn. 1994) (prohibition against modification of rights of creditor  
10 whose claim is secured by chapter 13 debtor's principal residence

11  
12

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13       <sup>7</sup>Some courts have reached this conclusion without  
14 consideration of § 1322(b)(2). See Branam, 476 B.R. at 338-39 (in  
15 rem claim against a debtor's property is a valid debt in a chapter  
16 13 proceeding and included in the § 109(e) eligibility calculation  
even if debtor's personal liability has been discharged, citing  
17 Scotto-DiClemente, 463 B.R. at 313-14). While this Court is not  
convinced that Johnson compels the rulings in Branam and Scotto-  
18 DiClemente, those cases are not essential to this Court's  
conclusion - which is based primarily on the impact of  
§ 1322(b)(2).

19

20       In Tolentino, Chief Judge Jaroslovsky noted that California  
state law provides a "more compelling reason" for not permitting  
the undersecured portion of a lien on debtors' principal residence  
21 to be bifurcated. Under Cal. Civ. Pro. Code § 580b, a deed of  
trust given to secure a purchase money loan secured by a personal  
residence is entirely without recourse. "[T]here is no rational  
basis for calling any portion of the claim unsecured when  
applicable law forbids the debt from being enforced any way except  
as secured. Deficiency claims are only allowed in bankruptcy to  
the extent that state law permits them." Tolentino, 2010 WL  
25 1462772, at \*1 (citing Tidewater Finance Co. v. Kenney, 531 F.3d  
312, 320 (4th Cir. 2008)).

26

27       In their reply brief, Debtors argue that there is no evidence  
the lien in question secures a purchase money loan. However,  
28 Debtors do not assert the obligation to Chase was not a purchase  
money loan. Resolution of this issue is not material to the  
Court's ruling and thus need not be addressed.

1 applies even if debtor has no personal liability); In re Gelletich,  
2 167 B.R. 370 (Bankr. E.D. Pa. 1994).

3 Debtors cite In re Shenas, 2011 WL 3236182 (Bankr. N.D. Cal.  
4 Jul. 28, 2011), as contrary authority. In that case, chapter 13  
5 debtors who had previously received a chapter 7 discharge sought to  
6 strip off a wholly unsecured junior lien against their primary  
7 residence. The creditor argued that treating its claim as  
8 unsecured rendered debtors ineligible for relief because debtors'  
9 unsecured claims would then exceed the § 109(e) limitation. The  
10 court disagreed, ruling that because the debt was unenforceable  
11 against the debtors, the debt was not allowable as an unsecured  
12 claim and, as such, would not be counted toward the § 109(e)  
13 unsecured debt limitation. 2011 WL 3236182, at \*1. The bankruptcy  
14 court cited similar rulings in Cavaliere v. Sapir, 208 B.R. 784,  
15 787 (D. Conn. 1997), and In re Osborne, 323 B.R. 489 (Bankr. D. Or.  
16 2005) (addressing chapter 12 eligibility). However, neither Shenas  
17 nor Cavaliere involved the impact of the antimodification provision  
18 of § 1322(b)(2). Shenas involved a wholly unsecured junior lien  
19 and did not even cite Johnson. The court in Cavaliere cited  
20 Johnson but did not analyze its holding that a chapter 7 discharge  
21 does not eliminate a debt, and did not address § 1322(b)(2) at all.  
22 Osborne is a chapter 12 case and did not address either Johnson or  
23 § 1322(b)(2). Therefore, the Court finds these cases inapposite to  
24 the issue before it.

25 Debtors further argue that there is no necessity for  
26 characterizing a claim on a principal residence the same way for  
27 both confirmation and eligibility. However, this argument misses  
28 the point - that eligibility is to be determined by looking at the

1 debtor's schedules, Scovis, 249 F.3d at 982. The Court may also  
2 consider other evidence in determining the amount of a debt, but  
3 should not engage in an extensive evidentiary hearing. See In re  
4 Slack, 187 F.3d 1070, 1073-74 (9<sup>th</sup> Cir. 1999) (whether a debt is  
5 liquidated for purposes of chapter 13 eligibility turns on whether  
6 the amount of the debt is subject to ready determination). Here,  
7 it is readily determinable from the schedules and the promissory  
8 note that Debtors jointly owe \$1,984,000. It is also readily  
9 determinable that the obligation is partially secured by Debtors'  
10 principal residence and thus Debtors cannot modify the claim.  
11 Accordingly, the entire amount of the debt must be counted as  
12 secured for purposes of eligibility.

13

14 **IV. CONCLUSION**

15 As noted, Debtors have listed the obligation to Chase on  
16 Schedule D in the total amount of \$1,984,000. Because the  
17 \$1,984,000 may not be bifurcated into secured and unsecured  
18 portions, the entire \$1,984,000 counts as a secured debt as to both  
19 Debtors. Accordingly, Debtors are not eligible to be chapter 13  
20 debtors, as their secured debts exceed \$1,081,400.

21 Both main bankruptcy cases shall be dismissed with a 70-day  
22 stay to give Debtors the opportunity to move to convert to chapter  
23 11.

24 \*\*\* END OF MEMORANDUM DECISION \*\*\*

25 **Court Service List**

26

27 All parties to be notified electronically

28